



Preserving America's Heritage

ACHP Policy Statement Regarding Federal Relationships with Tribal Historic Preservation Officers

Adopted on November 6, 2014
Washington, D.C.

Introduction

In 1992, the National Historic Preservation Act (NHPA) was amended to establish tribal historic preservation programs and grants to these tribes¹. Section 101(d)(2) of the act provides for federally recognized Indian tribes to apply to the Department of the Interior (DOI) to assume any or all of the functions of a State Historic Preservation Officer (SHPO) on their tribal lands². While a number of Indian tribes already had established historic preservation programs, these amendments allowed an officially designated Tribal Historic Preservation Officer (THPO) to assume some or all of the duties of the SHPO and to replace the SHPO in the review of undertakings on tribal lands under Section 106 of the NHPA. The National Park Service, on behalf of DOI, has thus far approved 150 THPOs throughout the United States and the number increases every year. Overall, the participation of Indian tribes in the national historic preservation program continues to expand.

The Section 106 process provides a key opportunity for THPOs and Indian tribes³ to influence federal decision making when historic properties of religious and cultural significance are threatened by proposed undertakings on and/or off tribal lands. Indian tribes that do not have a THPO in accordance with Section 101(d)(2) of the act also participate in consultation when a federal undertaking may affect historic properties of religious and cultural significance to them.

In 1998, in recognition of the statutory role of THPOs in the Section 106 process, the ACHP invited the General Chairman of the National Association of Tribal Historic Preservation Officers to become an observer to the ACHP.

In 2000, the ACHP adopted the "Policy Statement Regarding the Council's Relationships with Indian Tribes," to acknowledge its government-to-government relationship and trust responsibility to Indian tribes as well as to recognize tribal sovereignty and the rights of Indian tribes to participate in Section 106 consultation. While that policy recognized the important role of THPOs, the ACHP believes that it is appropriate to devote specific policy attention to THPOs and support their full and meaningful participation in the Section 106 process and the national preservation program.

¹ Indian tribe, as defined in the NHPA, "means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C 1602], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." (16.U.S.C. 470w4)

² Tribal lands are defined in the NHPA as "all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities" (16 U.S.C § 470w14).

Authority

The ACHP, an independent federal agency established by the NHPA, has among its statutory authorities the duty to issue the regulations implementing Section 106 of the NHPA in its entirety (which includes the role of Indian tribes, THPOs and Native Hawaiian organizations in that process); advise the President and Congress regarding historic preservation matters; educate Federal agencies, State and local governments, and Indian tribes as to the ACHP's authorized activities; and, recommend to federal agencies methods to improve the effectiveness, coordination, and consistency of their policies and programs with the national historic preservation program. 16 U.S.C. §§ 470j and 470s.

Purpose

This policy sets forth commitments of the ACHP to assist THPOs in maximizing the opportunities provided by the NHPA for them to fully and meaningfully participate in the Section 106 process and the national historic preservation program. One of the premises underlying this policy is the ACHP belief that the NHPA and regulations implementing Section 106 of the NHPA, 36 C.F.R. part 800, set the minimum standards for federal agency interaction with its preservation partners.

The basis for this policy regarding the federal government's responsibilities to and relationships with individual THPOs derives from the NHPA, particularly at 16 U.S.C. § 470a(d)(2). This policy sets forth actions the ACHP will take to clarify federal agency responsibilities under the NHPA and the Section 106 regulations with respect to THPOs. The policy also sets forth steps the ACHP will take to promote the full participation of THPOs in the national preservation program.

This policy pertains to THPOs as defined in 36 C.F.R. § 800.16(w):

Tribal Historic Preservation Officer (THPO) means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

Policy Principles

1. Participation in the Section 106 process

The NHPA provides Indian tribes the authority to assume the role of the SHPO on tribal lands and the ACHP's regulations require federal agencies to consult with THPOs in the Section 106 process for federal undertakings both on and off tribal lands. Therefore, the ACHP will:

- a. Inform Section 106 practitioners and the public about the role of THPOs in the Section 106 process; the federal responsibilities to consult with THPOs; and the value of the contributions of THPOs to historic preservation;
- b. Develop guidance, training and other outreach materials for federal agencies and their applicants regarding the role of THPOs in the Section 106 process; the expertise THPOs bring to Section 106 consultation; and, the role of Indian tribes that do not have a THPO pursuant to 101(d)(2) of the act.

2. THPO Expertise

The ACHP acknowledges the expertise that THPOs bring to the process and values the contributions of THPOs both in individual project reviews and in the national historic preservation program. Therefore, the ACHP will:

- a. Advance greater involvement of THPOs in the national preservation program;
- b. Continue to work with THPOs to address regional and national historic preservation issues of concern to Indian tribes;
- c. Continue to ensure that ACHP training is accessible to and affordable for THPOs; and,
- d. Continue to provide guidance and technical assistance to THPOs regarding the Section 106 process.

3. THPO-SHPO Collaboration

One of the first steps a federal agency must take in the Section 106 process is to initiate consultation with the SHPO, THPO, and other consulting parties. Initial contact and consultation with the SHPO and/or THPO is critical to ensure that the preservation experts who represent the citizens of a state or an Indian tribe have the opportunity to influence federal decision making at the very beginning of the Section 106 process. As two of the most important preservation voices in Section 106, collaboration and partnerships among SHPOs and THPOs are powerful tools to advance the preservation of historic properties. In fact, Section 101(d)(1)(a) requires the Secretary of the Department of the Interior to foster communication and collaboration between Indian tribes and SHPOs. Therefore, the ACHP will:

- a. Collaborate with the Department of the Interior to foster communication and cooperation between THPOs and SHPOs in the administration of the national historic preservation program to
 1. Ensure that all types of historic properties are given due consideration and,
 2. Encourage coordination among Indian tribes, SHPOs, and federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.
- b. Encourage SHPOs and THPOs to share information, within appropriate guidelines, especially in those program areas for which a THPO has assumed SHPO responsibilities on tribal lands.

4. Funding

The ACHP recognizes that THPOs face critical funding shortages and that additional funding is needed to facilitate meaningful participation in both the Section 106 process and the national preservation program. Therefore, the ACHP will:

- a. Continue to encourage full funding of the Historic Preservation Fund (HPF) and an increase in the total allocation of funding for THPOs.

b. Issue an updated Executive Director's memorandum regarding when it may be appropriate for federal agencies to compensate consulting parties including THPOs, Indian tribes, and SHPOs for services carried out in the Section 106 process. 4

Policy Implementation

Implementation of the policy is the responsibility of the ACHP's leadership and staff. Staff responsibility for this policy will reside with the Offices of Native American Affairs (ONAA) and Federal Agency Programs (OFAP). Accordingly, it shall be the responsibility of those offices to:

1. Train ACHP staff regarding the role of THPOs in the Section 106 process and their expertise regarding the identification and evaluation of historic properties of religious and cultural significance to their tribes as well as the appropriate treatment of such properties;
2. In partnership with THPOs, develop training, guidance, and/or outreach materials for all Section 106 participants, including but not limited to federal agencies, SHPOs, applicants, and local governments regarding such issues as:
 - a. The role of THPOs in the Section 106 process including but not limited to consultation regarding culturally appropriate methods⁵ for the:
 1. Identification of historic properties of religious and cultural significance;
 2. Evaluation of such properties for eligibility to the National Register of Historic Places;
 3. Assessment of effects to historic properties;
 4. Determination of appropriate means to avoid, minimize, or mitigate adverse effects to such properties; and,
 5. Resolution of adverse effects.
 - b. The scope and timing of federal agency consultation with the THPO in the process;
 - c. The respective roles of the SHPO and the THPO when both participate in the Section 106 process;
 - d. The role of the THPO in government-to-government consultation in the Section 106 process; and,
 - e. The role of THPOs and Indian tribes in Section 106 consultation for undertakings off tribal lands.
3. Continue to regularly communicate with THPOs regarding historic preservation news and policy developments;

4 In 2001, the ACHP Executive Director issued a memorandum entitled, Fees in the Section 106 Process. The memorandum clarified that when a federal agency or an applicant seeks information from an Indian tribe regarding sites or requests a survey, the tribe may "be justified in requiring payment for its services, just as any other contractor."

5 Culturally appropriate methods may differ from methods traditionally employed in the Section 106 process; for example, shovel testing to identify archeological resources.

4. Promote the active engagement of THPOs in Section 106 consultation in individual cases that may affect properties of religious and cultural significance to their tribes;
5. Encourage federal agencies to give adequate and meaningful consideration to the views of THPOs in developing appropriate measures to identify and evaluate historic properties and assess and resolve adverse effects; and,
6. Encourage THPOs and federal agencies to develop mutually acceptable protocols for their interactions and Section 106 consultations and make them available to the ACHP.
7. Disseminate examples of successful consultations between federal agencies and THPOs.